ATTORNEY FOR APPELLANT:

ROBERT D. KING, JR.,
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

J.T. WHITEHEAD
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

WILLIAM DIXSON,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0604-CR-356
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Jane Magnus Stinson, Judge
Cause No. 49G06-0507-FA-115418

February 16, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAKER, Judge

Appellant-defendant William Dixson appeals his conviction for Dealing in Cocaine,[1] a class A felony. Specifically, Dixson argues that the search of his wife's vehicle violated his rights under the Fourth Amendment to the United States Constitution and that the evidence was insufficient to support his conviction. Finding no error, we affirm the judgment of the trial court.

FACTS

On September 15, 2004, Indianapolis Police Detective Mark Hess was working for the United States Marshal's Fugitive Task Force and was responsible for apprehending individuals wanted on outstanding warrants. Detective Lesia Moore of the Indianapolis Police Department contacted Detective Hess for the purpose of locating Dixson, who was wanted on a warrant for murder. Tr. p. 117. During the course of an investigation, Detective Hess learned that Dixson was in the area of the 2300 block of Kenwood in Indianapolis.

With the assistance of other Indianapolis Police Officers, Detective Hess drove to the area, observed a number of individuals standing on the front porch at 2310 Kenwood, and ordered all of them to the ground. Although Dixson fled to the back of the residence, the police eventually apprehended him.

Dixson spoke with Detective Hess about the murder for which he had been arrested and identified his accomplice. Dixson then pointed to his wife, Tonya Boyd-Dixson, as she was walking toward them. Dixson asked Detective Hess if he could

give Tonya a set of keys to an automobile. However, Detective Hess took possession of the keys, which were to a red, two-door Ford Probe. Detective Hess testified that Dixson immediately remarked, "hey, there's some dope in the car." Tr. p. 123. Detective Hess then handed the keys to Detective Moore who conducted a warrantless search of the vehicle. During the search, Detective Moore discovered 3.27grams of cocaine inside the door panel of the vehicle.

Dixson was arrested and charged with the cocaine dealing offense and one count of possession of cocaine as a class C felony. Prior to trial, Dixson filed a motion to suppress claiming "the officers' entry into and search of the vehicle was illegal due to the absence of a warrant." Appellant's App. p. 34. The trial court denied the motion, stating that: "the admission of the defendant that there was dope in the car is probable cause." Tr. p. 63.

At a jury trial that commenced on March 22, 2006,[2] John Lane testified at trial that he was with Dixson on the afternoon and evening of September 15, 2004. The two men "smoked a little weed," and Lane observed Dixson sell cocaine. Tr. p. 102. More specifically, Lane stated that Dixson sold crack cocaine to at least three individuals and received a total of approximately $300 for the drugs. Id. at 107-08.

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[1] Ind. Code § 35-48-4-1.
[2] Dixson's original trial began on February 15, 2006, but ended in a mistrial.

Dixson was ultimately found guilty on both counts. At the sentencing hearing that commenced on March 28, 2006, the trial court merged the offenses and sentenced Dixson to fifty years on the class A felony dealing charge. The sentence was ordered to run consecutively the sixty-five year sentence that had been imposed on a murder count and the eighteen-year sentence that had been imposed on an unrelated dealing conviction. Dixson now appeals.

DISCUSSION AND DECISION

I. Motion to Suppress

Dixson first contends that the cocaine seized from the vehicle should not have been admitted into evidence at trial. Specifically, Dixson argues that the search of the vehicle "was illegal under the Fourth Amendment as the search cannot be justified on the basis of the automobile exception since the vehicle was not readily moveable; police controlled the investigative scene; Dixson was nowhere near the vehicle; and the vehicle was ultimately impounded." Appellant's Br. p. 4.

We review a trial court's determination as to the admissibility of evidence for an abuse of discretion, and we will reverse only when the decision is clearly against the logic and effect of the facts and circumstances. Smith v. State, 754 N.E.2d 502, 504 (Ind. 2001). Our standard of review with respect to rulings on the admissibility of evidence is essentially the same whether the challenge is made by a pre-trial motion to suppress or by trial objection. Ackerman v. State, 774 N.E.2d 970, 974-75 (Ind. Ct. App. 2002), trans. denied. We do not reweigh the evidence, and we consider conflicting evidence most favorable to the trial court's ruling. Collins v. State, 822

N.E.2d 214, 218 (Ind. Ct. App. 2005), trans. denied. However, we must also consider the uncontested evidence favorable to the defendant. Id.

Notwithstanding Dixson's arguments regarding the search of the vehicle, the State maintains that Dixson does not have standing to challenge the search because the vehicle was registered to Tonya and not to him. Appellee's Br. p. 4. Thus, the State argues that Dixson had no standing to challenge the search because he did not have a reasonable expectation of privacy in the vehicle.

This court has determined that an individual's rights against unreasonable search and seizure under the Fourth Amendment are personal. Best v. State, 821 N.E.2d 419, 424 (Ind. Ct. App. 2005), trans. denied. To challenge a search as unconstitutional under the Fourth Amendment, a defendant must have a legitimate expectation of privacy in the place that is searched. Id. In other words, a defendant has no standing to object to the search of another person's property. Chappel v. State, 591 N.E.2d 1011, 1016 (Ind. 1992). Moreover, the burden is on the defendant challenging the constitutional validity of a search to demonstrate that he had a legitimate expectation of privacy in the premises searched. State v. Friedel, 714 N.E.2d 1231, 1236 (Ind. Ct. App. 1999). In Pollard v. State, 388 N.E.2d 496, 503 (Ind. 1979), it was determined that a defendant driving an automobile owned by his wife was found to have Fourth Amendment standing to challenge a search of that automobile. Specifically, our Supreme Court observed that "a husband's expectation of privacy while in an automobile titled to his spouse is as legitimate as that of the

wife." Id.[3]

In this case, although Dixson was not actually driving the vehicle when he handed the keys to Detective Hess, we conclude that Dixson had a reasonable expectation of privacy in the vehicle that was registered to Tonya sufficient to allow him to challenge the reasonableness of the search on Fourth Amendment grounds.

Irrespective of the standing issue, the State maintains that the seizure of the cocaine was justified under the automobile exception to the warrant requirement. In California v. Acevedo, 500 U.S. 565, 569 (1991), the United States Supreme Court determined that when probable cause exists to believe that a vehicle contains evidence of a crime, a warrantless search of the vehicle does not violate the Fourth Amendment because of the exigent circumstances arising out of the likely disappearance of the vehicle. In other words, if a vehicle is readily mobile and probable cause exists to believe that it contains contraband, the Fourth Amendment permits police to search the vehicle without more. California v. Carney, 471 U.S. 386, 390-91 (1985).

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[3] As an aside, we note that passengers who lack a possessory or property interest in the vehicle that is searched do not have a legitimate expectation of privacy and therefore lack standing to challenge a search. Id. Although this court has determined that "[e]very person in a motor vehicle has a right to contest the stop of the vehicle in which he is traveling as either a driver or passenger," Osborne v. State, 805 N.E.2d 435, 439 (Ind. Ct. App. 2004) (citing Delaware v. Prouse, 440 U.S. 648, (1979)) (emphasis added), we declined to extend this principle to a subsequent search of the vehicle where a passenger has no possessory or property interest in the vehicle. Moreover, our Supreme Court has declined to adopt an "automatic standing" rule which would confer automatic standing on individuals accused of crimes where possession was both an element of the crime and a factor necessary for standing to challenge a warrantless search. Livingston v. State, 542 N.E.2d 192, 194 (Ind. 1989); see also State v. Lucas, No. 73A01-0512-CR-570, slip op. at 6 n.3 (Ind. Ct. App. Jan. 17, 2007). Finally, the United States Supreme Court repudiated the "automatic standing" rule for possessory crimes in United States v. Salvucci, 448 U.S. 83 (1980).

This court has observed that probable cause is a fluid concept that is incapable of precise definition. Snover v. State, 837 N.E.2d 1042, 1048 (Ind. Ct. App. 2005). However, it has been determined that probable cause is established where a sufficient basis of fact exists to permit a reasonably prudent person to believe that a search of the premises or person will uncover evidence of a crime. Walker v. State, 829 N.E.2d 591, 594 (Ind. Ct. App. 2005), trans. denied. That said, if a search is supported by probable cause, the warrantless search of a vehicle may also include a search of a container or package that is found in the vehicle. United States v. Ross, 456 U.S. 798, 825 (1982).

In Cheatham v. State, 819 N.E.2d 71, 75 (Ind. Ct. App. 2004), this court determined that a warrantless automobile search remains valid, given probable cause that it contained evidence of a crime, even if the search does not take place until after the automobile's occupants are arrested and the automobile was transported to a police station. And in Johnson v. State, 766 N.E.2d 426, 433 (Ind. Ct. App. 2002), we held that the justification for a warrantless search of an automobile is not lost simply because the vehicle has been immobilized—nor does the justification for the search depend upon the likelihood that the automobile would have been driven away in that particular case. Finally, the justification for the search does not require a determination that the contents of the vehicle would have been tampered with during the period required for the police to obtain a warrant. Id.

In this case, Detective Hess testified—absent any objection—that Dixson admitted to him that drugs were present in the vehicle. Tr. p. 123. In our view,

Dixson's volunteered comment to Detective Hess amounted not only to a consent to conduct a search but was also an invitation for the police to search the vehicle. In essence, Dixson's unprovoked statement to Detective Hess satisfied the probable cause requirement under the automobile exception for the police officers to conduct a warrantless search the vehicle. And Dixson cannot prevail on a claim that the search should be declared unconstitutional merely because the officers had already obtained the keys to the automobile. See Cheatham, 819 N.E.2d at 75; Johnson, 766 N.E.2d at 433. Thus, Dixson's challenge to the search fails, and we conclude that the cocaine was properly admitted into evidence.

II. Sufficiency of the Evidence

Dixson next maintains that the evidence was insufficient to support his conviction for dealing in cocaine. Specifically, Dixson argues that his conviction must be vacated because the State failed to establish that he was in constructive possession of the drugs.

In reviewing a sufficiency of the evidence claim, this court neither reweighs the evidence nor assesses the credibility of the witnesses. Vasquez v. State, 762 N.E.2d 92, 94 (Ind. 2001). We look to the evidence most favorable to the verdict and draw reasonable inferences therefrom. Sanders v. State, 704 N.E.2d 119, 123 (Ind. 1999). A conviction will be upheld if there is substantial evidence of probative value from which a jury could have found the defendant guilty beyond a reasonable doubt. Warren v. State, 725 N.E.2d 828, 834 (Ind. 2000).

In this case, Dixson's challenge to the sufficiency of the evidence rests exclusively on the claim that the State failed to establish Dixson's constructive possession of the cocaine that was seized from the vehicle. This court has determined that in the absence of actual possession of drugs, constructive possession may support a conviction for such an offense. Donegan v. State, 809 N.E.2d 966, 976 (Ind. Ct. App. 2004). In order to prove constructive possession, the State must demonstrate that the defendant has both (1) the intent to maintain dominion and control and (2) the capability to maintain dominion and control over the contraband. Id. To prove the element of intent, the State must establish the defendant's knowledge of the presence of the contraband. Id. This knowledge may be inferred from either the exclusive dominion and control over the premises containing the contraband or, if the control is non-exclusive, evidence of additional circumstances that point to the defendant's knowledge of the presence of the contraband. Id. These additional circumstances include: (1) incriminating statements by the defendant; (2) attempted flight or furtive gestures; (3) a drug manufacturing setting; (4) proximity of the defendant to the drugs; (5) drugs in plain view; and (6) location of the drugs in close proximity to items owned by the defendant. Id.

As noted above, Lane testified at trial that he was with Dixson on the afternoon and evening of September 15, 2004. Tr. p. 102. The two men "smoked a little weed" and Dixson sold drugs that evening. Id. Lane stated that Dixson sold crack cocaine to at least three individuals and received a total of approximately $300 for the drugs. Id. at 107-08. Moreover, Dixson admitted to the presence of the drugs in the vehicle, and

he possessed the keys to that vehicle. Id. at 122-23. While the jury could have rejected the veracity of Lane's testimony and concluded that the cocaine belonged to Dixson's wife, it is apparent that the jury chose to believe that the drugs belonged to Dixson and that he had the intent to deal them. In sum, given Dixson's knowledge of the drugs, his possession of the keys to the vehicle, and the testimony offered by Lane, we conclude that the evidence was sufficient to support the conviction.

The judgment of the trial court is affirmed.

DARDEN, J., and ROBB, J., concur.